IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

MFA.No. 1001 of 2002()

OPMV.333/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE COMPANY LIMITED,
CALICUT NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, METRO PALACE, KOCHI-18

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONERS 2 TO 4
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1. T.A.BEEVI UMMA W/O. KUNHI MUHAMMED,
VALIYAVEETTIL HOUSE, THAZHEPALAM,
THRIKKANDIYOOR, TIRUR-1

2. V.N.TIPPU (MINOR)S/O. V.K.HYDERALI,
DO.DO.

3. P.M. ATHIKKA BEEVI @ BABY
W/O. V.K.HYDERALI, DO.DO.

(MINOR 2ND RESPONDENT
IS REPRESENTED BY HIS MOTHER 3RD RESPONDENT)

(THE 1ST PETITIONER DIED AND NO RELIEFS ARE
CLAIMED AGNIST RESPD 1&2 IN THE ORIGINAL PETITION
& HENCE THEY ARE NOT MADE PARTIES IN THIS APPEAL

BY ADV. SRI.T.KRISHNAN UNNI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23.11.2007, THE COURT ON 23/11/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.6150 OF 2002 IN MFA.NO.1001 OF 2002:

DISMISSED.

Sd/-
J.B.KOSHY, JUDGE

23.11.2007

Sd/-
K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 1001 OF 20O1

Dated this the 23rd day of November, 2007

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company challenging the quantum of compensation. A 42 year old businessman at the peak of his business, met with an accident on 9.12.1994. He claimed a compensation of Rs.5,50,000/-. While he was driving his car, a lorry driven by the first respondent in a rash and negligent manner, hit the car and sustained serious injuries including multiple fractures. Second respondent is the owner of the offending lorry and the appellant Insurance Company has duly insured the lorry during the relevant period. Even though the Insurance Company has filed application under Section 170, the owner and driver also contested the case. The Tribunal awarded an amount of Rs.5,38,300/-, out of which an amount of Rs.1,74,371/- was awarded as medical expenses. The compensation granted for permanent disability was Rs.3,15,000/-. The Insurance Company questions the quantum of compensation. As a result of the accident, he suffered serious injuries. Exhibit A2 wound certificate shows the following injuries:

"1. Deformity upper arm and face.

2. Tanderness chest.

3. Lacerated wound dorsally left forearm.

4. Fracture 2nd, 3rd, 4th metacarpal left sides.

5. Fracture right numerus.

6. Fracture right radius.

7. Carp metacarpal dislocation.

8. Fracture right ulna."

Exhibit A3 discharge certificate shows that he was an inpatient for 44 days and he was further advised rest. Exhibit A5 is the permanent disability certificate. The permanent disability was assessed as 25%. The doctor advised hip replacement. During the pendency of the case, he died also on 15.5.1999. There is no direct evidence to show that the injuries in the accident is the immediate cause of death. But various fractures as well as the necessity for hip replacement shows that it has got an impact on the accident. After his death, his legal representatives were impleaded. Since there is no direct connection, the Tribunal calculated compensation for 25% disability only. With regard to the income was concerned, he was a businessman. Exhibit A4 is the income tax assessment order which

shows that the tax payable for the year 1997-98 was Rs.3,52,941/-. But the Tribunal was of the opinion that the income tax assessed is from the income derived from the business alone. But for the purpose of calculation, the Tribunal has taken Rs.7,000/- as the monthly income. Considering the income-tax assessment etc., we are of the opinion that Rs.7,000/- as monthly income is very moderate and reasonable. He was 42 year old at the time of accident and 46 at the time of death. Only disability compensation was awarded, which includes reimbursement of expenses and pain and suffering etc. Disability compensation assessed for 25% disability was Rs.3,15,000/- (7000 x 12 x 12 x 25/100). It is the case of the Insurance Company that since the victim of the accident was died after four years, compensation can be awarded to him only taking 4 as the multiplier as the disability compensation cannot be claimed for the legal heirs. The death cannot be predicted. He cannot also say that the accident has no impact on his premature death at the very young age. If second schedule is taken as the guideline and the entire monthly income as can be reflected in the tax paid by him, the compensation would be much higher than the compensation awarded. Very low multiplicand was taken, even though the deceased was receiving a higher income. However, we

also note that what is payable on the date of accident was claimed by the legal heirs. Subsequently after his death, his legal representatives are entitled to receive the amount ordered. Therefore, it cannot be said that the legal representatives are not entitled to the compensation amount. The petition was filed by the injured himself. It is true that he had suffered five fractures and his has to be replaced and he was bed ridden from the date of accident till date. Taking all these facts into account, we are of the opinion that only just and reasonable compensation was awarded and no interference is required. We also note that since the driver and owner were conducting the case, there was no permission under Section 170 and quantum of compensation cannot be questioned by the appellant Insurance Company. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1001 OF 2002

JUDGMENT

23.11.2007